



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/080,037	02/19/2002	Spencer M. Gold	SMQ-088/P6549	8597
959	7590	06/22/2004	EXAMINER	
LAHIVE & COCKFIELD, LLP. 28 STATE STREET BOSTON, MA 02109			VERBITSKY, GAIL KAPLAN	
			ART UNIT	PAPER NUMBER
			2859	

DATE MAILED: 06/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

AK

Advisory Action	Applicant(s) 10/080,037	Applicant(s) GOLD ET AL.	
	Examiner Gail Verbitsky	Art Unit 2859	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 June 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see paragraph 10.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: 12-14.

Claim(s) rejected: 1-11, 15 and 16.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☒ Other: See Continuation Sheet

G. Verbitsky
AU 2859

Continuation of 10. Other:

Applicant states that Iwama does not teach a thermal sensor having an oscillator circuit to generate a first and second oscillating signals. This argument is not persuasive because Iwama teaches a thermometer (thermal sensor) comprising an oscillator circuit having reference and temperature sensing oscillators producing first and second oscillating signals respectively, and a counter circuit comprising a first counter 12 and a second counter 22.

With respect to the "inherency statement": Applicant states that the Examiner argues that Iwama "inherently" has an electrical circuit and that the electrical circuit includes the reference oscillating circuit. The Examiner does not use the "inherency statement" in the rejection on the merits of claim 1. The Examiner uses the "inherency statement" in the arguments presented in paragraph 16 of the final Office Action to explain that the thermometer of Iwama is an electrical thermometer, therefore, its circuit is an electrical circuit which comprises all the elements shown in the drawings of Iwama, including an oscillating circuit having first and second oscillators and one or more counters (counter circuit). Being a temperature dependent counter, the counter 12 asserts/ has some output signal related to temperature measured. When this output reaches a predetermined value (as compared with memory), the reference counter 22 performs a second count based on the reference oscillating signals and, when the first counter stops to indicate data of the first counter, the second counter is being reset (halted, discontinued) (see entire col. 3).

With respect to Fujikawa: Applicant states that the drawings of Fujikawa have two distinct oscillating circuits each generating a single oscillating signal. This argument is not persuasive because, Fujikawa shows in Fig. 2 an electrical thermometer whose measurements are based on a temperature sensing oscillating circuit having two oscillators wherein each of said oscillators produces an oscillating signal.

With respect to Woodman, Fry, Hodate, Binder, Pippin, Holmdahl, Lipp: Applicant states that these references do not teach to combine (fail to bridge). This argument is not persuasive because, the Examiner recognizes that there should be some reason why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. In re Nomiya, 184 USPQ 607 (CCPA 1975). However, there is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. In re McLaughlin, 170 USPQ 209 (CCPA 1971). The references are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. In re Bozek, 163 USPQ 545 (CCPA) 1969. In this case, these references are only used by the Examiner as secondary references for their teaching of the elements that are normally used with oscillating circuits so as to obtain data being measured and properly evaluate it.